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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,183	09/15/2000	Christine Dupuis	05725.0753-00000	4212
22852	7590	06/17/2004	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 1300 I STREET, NW WASHINGTON, DC 20005			WELLS, LAUREN Q	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

09/663,183

## Applicant(s)

DEPUIS, CHRISTINE

## Examiner

Lauren Q Wells

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/22/04
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-33, 38-82, 87-102 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33, 38-82, 87-102 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

Claims 1-33, 38-82 and 87-102 are pending. The Amendment filed 3/22/04, amended claims 1, 19, 26-29, 50, 68, 75-78 and 102.

#### ***Response to Applicant's Arguments/Amendment***

The Applicant's arguments filed 3/22/04 to the rejection of claim 1-33, 38-82 and 87-102 made by the Examiner under 35 USC 103 have been fully considered and deemed not persuasive.

The Applicant's amendment to the claims filed 3/22/04, is sufficient to overcome the 35 USC 112 rejection in the previous Office Action.

#### ***103 Rejection Maintained***

The rejection of claims 1-33, 38-82 and 87-102 under 35 U.S.C. 103(a) as being unpatentable over Blankenburg et al. (WO 99/04750) in view of Samain et al. (6,511,651) is MAINTAINED for the reasons set forth in the Office Action mailed 10/23/03 , and those found below.

Applicant argues, "the Examiner's statement that Blankenburg 'lacks polyvinylpyrrolidone/vinyl acetate/vinyl propionate terpolymers,' overlooks the fact that the present invention claims at least one nonionic polymer comprising at least one vinyl lactam unit chosen from polyvinylpyrrolidone/vinyl acetate/vinyl propionate terpolymers". This argument is not persuasive. It is respectfully pointed out that polyvinylpyrrolidone/vinyl acetate/vinyl propionate terpolymer is a nonionic polymer.

Applicant argues, "The teachings of Samain, which the Examiner relied on to remedy the deficiencies of Blankenburg, do not include the claimed element of a nonionic polymer

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comprising at least one vinyl lactam unit chosen from polyvinylpyrrolidone/vinyl acetate/vinyl propionate terpolymers". This argument is not persuasive. As pointed out above, polyvinylpyrrolidone/vinyl acetate/vinyl propionate terpolymer is a nonionic polymer, and Samain teaches polyvinylpyrrolidone/vinyl acetate/vinyl propionate terpolymer that is nonionic.

Applicant argues, "the Examiner mischaracterizes the teaching of Blankenburg with respect to vinyl lactams. Applicant respectfully submits that Blankenburg actually teaches away from the present claims. In its discussion of the use of synthetic polymers for hairstyling. . . Blankenburg states that 'at first, vinyl lactam homopolymers and copolymers were preferred, but subsequently polymers containing carboxylate groups have become increasingly important". This argument is not persuasive. First, it is pointed out that the Examiner has not mischaracterized the reference, as part c of the motivation is repeated word for word from Blankenburg. Second, it is respectfully pointed out that the above statement does not teach away from the instant claims, as the instant claims are not merely directed to vinyl lactam homopolymers and copolymers, and furthermore, this statement does not require that such polymers are no longer of use in hair fixatives. As previously stated, it is obvious to combine one hair fixative with another in the cosmetic art because of the expectation of enhanced fixation. Lastly, it is respectfully pointed out that the Examiner has provided many reasons for the motivation to combine these references.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the

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time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

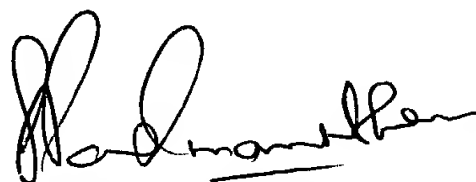
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is 571-272-0634. The examiner can normally be reached on M&R (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lqw



**SREENI PADMANABHAN**  
**SUPERVISORY PATENT EXAMINER**